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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,997	11/26/2003	Horacio L. Rodriguez Rilo	AHHR-02	9565
26875 7590 11/27/2007 WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			EXAMINER BEISNER, WILLIAM H	
			ART UNIT 1797	PAPER NUMBER
			MAIL DATE 11/27/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/722,997

Applicant(s)

RODRIGUEZ RILO ET AL.

Examiner

William H. Beisner

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) 1-44 and 52-66 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 43-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 2/04;3/04;2/06.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group V, Claims 45-51, in the reply filed on 9/5/2007 is acknowledged.
2. Claims 1-44 and 52-66 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention(s), there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 9/5/2007.

### ***Information Disclosure Statement***

3. The information disclosure statements filed 2/27/2004; 3/1/2004; and 2/27/2006 have been considered and made of record.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the

United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 45-51 are rejected under 35 U.S.C. 102(a) and/or (e) as being anticipated by Benedict (US 2002/0132341) (under 35 USC 102(a) and (e)) or Benedict (US 7,045,349)(under 35 USC 102(e)).

With respect to claim 45, the references of Benedict disclose a method for optimizing a process of isolating a subpopulation of cells comprising: digesting an organ or other biological material in a medium within a recirculation loop (See Figure 1 and Steps 307 and 310) to form a subpopulation of cells; maintaining a fluid flow of said medium through said recirculation loop (Step 309); providing a computer operatively connected to said recirculation loop for operatively controlling at least one parameter of the isolation of said subpopulation of cells (See element 159 and Step 308); and periodically removing cells from said subpopulation of cells and comparing the cells to a standard to determine the extent of digestion (See Step 312 and paragraph [0024]).

With respect to claim 46, the at least one parameter is selected from the group consisting of temperature, pressure, pH, and dissolved oxygen concentration (See paragraph [0030]).

With respect to claim 47, the comparison is performed manually (See paragraph [0024]).

With respect to claim 48, wherein the method further includes controlling said process of collecting a subpopulation of cells from a digested organ or other biological material with a computer (See paragraphs [0024] and [0032]).

With respect to claim 49, wherein the comparing said cells to said standard is performed by said computer (See paragraphs [0024] and [0032]).

With respect to claim 50, the method further includes recording a first digital image of said subpopulation of cells with a digital recording device operatively connected to said computer (See paragraphs [0024] and [0032]).

With respect to claim 51, the method further comparing said first digital image to a second digital image, wherein said computer includes memory and said second digital image is archived in the memory of said computer (See paragraphs [0024] and [0032]).

### ***Double Patenting***

6. Claims 1-10 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 62-79 of copending Application No. 11/748,735 in view of Benedict (US 2002/0132341 or Benedict (US 7,045,349).

Claims 62-79 of copending application '735 encompass a cell isolation method that is substantially the same as that instant claimed in claims 1-10. The isolation method includes digesting an organ or tissue in a circulation loop wherein a flow of

fluid is maintained in the loop. The method also includes process control of the isolation conditions using a computer and collecting the cells.

Instant claims 1-10 differ by further reciting that the method includes the step of periodically removing cells from the subpopulation of cells and comparing the cells to a standard to determine the extent of digestion.

The references of Benedict disclose that it is conventional in the art of cell isolation to include the step of periodically removing cells from the subpopulation of cells and comparing the cells to a standard to determine the extent of digestion (See paragraphs [0024] and [0032]).

In view of this teaching, it would have been obvious to one of ordinary skill in the art to provide the method of claims of application '735 with an additional step of periodically removing cells from the subpopulation of cells and comparing the cells to a standard to determine the extent of digestion for the known and predictable result of facilitating the determination of when the digestion process has been completed.

This is a provisional obviousness-type double patenting rejection.

### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Beisner whose telephone number is

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571-272-1269. The examiner can normally be reached on Tues. to Fri. and alt. Mon.  
from 6:15am to 3:45pm.

If attempts to reach the examiner by telephone are unsuccessful, the  
examiner's supervisor, Gladys J. Corcoran can be reached on 571-272-1214. The fax  
phone number for the organization where this application or proceeding is assigned  
is 571-273-8300.

Information regarding the status of an application may be obtained from the  
Patent Application Information Retrieval (PAIR) system. Status information for  
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Should you have questions on access to the Private PAIR system, contact the  
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assistance from a USPTO Customer Service Representative or access to the  
automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-  
1000.

/William H. Beisner/  
Primary Examiner  
Art Unit 1797

WHB